

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1392 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

RAMABHAI GORDHANBHAI VASAVA THRO PAH DAYABHAI D VASAVA

Versus

VINUBHAI G PATEL

Appearance:

Shri G.R.Udhwani, Advocate, for Shri Tushar Mehta,
Advocate, for the Petitioner.

Shri A.J.Patel, Advocate, for Respondents Nos.1 and
2.

Respondent No. 3 served.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 11/09/96

ORAL JUDGEMENT

The decision rendered by the Gujarat Revenue

Tribunal at Ahmedabad (the Tribunal for convenience) on 25th October 1994 in Revision Application No.TEN.BA 873 of 1993 is under challenge in this petition under Article 227 of the Constitution of India. By its impugned decision, the Tribunal set aside the order passed by the Deputy Collector at Bharuch on 30th December 1993 in Tenancy Revision No.8 of 1993. By his aforesaid order, the Deputy Collector at Bharuch set aside the order passed by the Mamlatdar at Bharuch on 22nd May 1970 in Tenancy Case No.31 of 1970. By his aforesaid order, the Mamlatdar at Bharuch disposed of the application made by the tenant (respondent No.1 herein) under Section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Act for brief) fixing the purchase price of one parcel of land bearing survey No.51 admeasuring 3 acres 3 gunthas situated at Jadeshwar district Bharuch (the disputed land for convenience) at Rs.3001 by consent of the parties.

2. The facts giving rise to this petition move in a narrow compass. The petitioner herein was the owner of the disputed land. Respondent No.1 herein was its tenant. The tenant applied for fixation of the purchase price of the disputed land under Section 32-G of the Act. It came to be registered as Tenancy Case No.31 of 1970. It appears that the petitioner and respondent No.1 settled their disputes with respect to the purchase price and, by his order passed on 22nd May 1970, the Mamlatdar at Bharuch fixed the purchase price of the disputed land at Rs.3001 and disposed of the aforesaid tenancy case. Its copy is at Annexure-A to this petition. It appears that the order at Annexure-A to this petition was not carried in appeal. It was not taken in suo motu revision by any authority under Section 76-A of the Act. It appears that the petitioner herein moved the Deputy Collector at Bharuch in revision under Section 76 of the Act for challenging the order at Annexure-A to this petition. It came to be registered as Tenancy Revision No.8 of 1993. By his order passed on 25th October 1993 in the aforesaid revisional application, the Deputy Collector at Bharuch accepted it and set aside the order at Annexure-A to this petition. Its copy is at Annexure-C to this petition. That aggrieved respondents Nos.1 and 2 herein. They therefore carried the matter in revision before the Tribunal under Section 76 of the Act. It came to be registered as Revision Application No.873 of 1993. By its decision rendered on 25th October 1994 in the aforesaid revisional application, the Tribunal accepted it and set aside the order at Annexure-C to this petition. Its copy is at Annexure-D to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Article 227 of the

Constitution of India for questioning the correctness of the decision at Annexure-D to this petition.

3. As rightly submitted by learned Advocate Shri Patel for respondents Nos.1 and 2, the Deputy Collector at Bharuch had no jurisdiction to entertain the revisional application from the petitioner herein under Section 76 of the Act. The reason therefor is quite simple. Section 76 of the Act empowers the Tribunal to entertain revisional application against the order passed by the Collector or the Deputy Collector exercising powers of the Collector under the Tenancy Act. What was challenged before the Deputy Collector at Bharuch by the petitioner herein was the order at Annexure-A to this petition passed by the Mamlatdar at Bharuch on 22nd May 1970. It would not fall within the purview of Section 76 of the Act. It was amenable to appeal under Section 74 thereof. If the petitioner was aggrieved thereby, he could have carried the matter in appeal before an appropriate forum under Section 74 thereof. He could not have moved the Deputy Collector at Bharuch in revision under Section 76 of the Act. In that view of the matter, the order at Annexure-C to this petition cannot be sustained in law on that ground alone.

4. Even otherwise, even if it is treated as an application for revision under Section 76-A of the Act, the Deputy Collector at Bharuch could not have exercised his revisional powers beyond the period of one year from the date of the order. The language of Section 76-A of the Act is very clear and it empowers the authority named therein to exercise revisional powers by calling for the record within one year from the date of the order. It confers suo motu revisional powers on the authority named therein. The present petitioner could have been an informant for invocation of suo motu revisional powers thereunder. However, the Deputy Collector at Bharuch ought to have looked at Section 76-A of the Act before entertaining the revisional application made by the present petitioner to him. The Deputy Collector at Bharuch ought to have realised that he was not competent to exercise his revisional jurisdiction or powers by calling for the records beyond the period of one year from the date of the order at Annexure-A to this petition. It needs no telling that the order at Annexure-A to this petition was passed as early as on 22nd May 1970. An attempt to invoke the revisional powers under Section 76-A of the Act for its revision was made as late as more than 23 years thereafter on 20th September 1993 as transpiring from the order at Annexure-C to this petition. The Tribunal has rightly

set aside the order at Annexure-C to this petition on the ground that revisional powers under Section 76-A of the Act could not have been exercised more than 23 years after the date of the order at Annexure-A to this petition. The aforesaid view of the Tribunal is in consonance with the proviso to Section 76-A of the Act.

5. I am fortified in my view by the binding Division Bench ruling of this court in the case of THAKORBHAI TRIBHOVANDAS RAO v. STATE OF GUJARAT reported in 1995 (1) Gujarat Law Herald at page 758. It has clearly been held therein that the authority named in Section 76-A of the Act has no revisional power to be exercised beyond the period of one year from the date of the order by calling for the record of the proceeding thereafter. Sitting as a single Judge, the aforesaid Division Bench ruling of this court is binding to me. Even otherwise, I am in respectful agreement therewith.

6. Learned Counsel Shri Udhwani for the petitioner wants to rely on certain judgments taking the view that the nullity order can be challenged at any time and even in collateral proceedings. I think reliance on such judgments is wholly misconceived. The reason therefor is quite simple. The Proviso to Section 76-A of the Tenancy Act is very clear. The authority named therein is precluded from exercising his powers of calling for the record beyond the period of one year from the date of the order. The Legislature in its wisdom has placed a fetter on the powers to be exercised by the authority named in the aforesaid statutory provision by calling for the record of the proceeding beyond the period of one year from the date of the order. Learned Counsel Shri Udhwani for the petitioner has not been able to show any ruling much less any binding ruling taking the view that, in the case of a nullity order, the authority named in Section 76-A of the Act, can call for the record of the proceeding beyond the period of one year from the date of the order. In that view of the matter, the rulings referred to by learned Counsel Shri Udhwani for the petitioner will not have any applicability in the present case. I have therefore thought it fit not to burden this judgment of mine by citing them and elaborately dealing with them.

7. In view of my aforesaid discussion, I am of the opinion that the impugned decision of the Tribunal at Annexure-D to this petition calls for no interference by this Court in this petition under Article 227 of the Constitution of India.

8. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs. The interim relief stands vacated.

9. At the oral request of learned Counsel Shri Udhwani for the petitioner, the order vacating the interim relief in this case is stayed for a period of eight weeks from today with a view to enabling the petitioner for challenging this judgment of mine before an appropriate forum by means of an appropriate proceeding.

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